

compensation, effective April 26, 2020, because he had not established that he had a dependent as defined under FECA.

FACTUAL HISTORY

On January 29, 2015 appellant, then a 46-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on January 13, 2015 he sustained a right knee injury when he tripped and twisted his right knee while in the performance of duty.³ He stopped work on February 2, 2015. OWCP accepted appellant's claim for joint effusion and medial meniscus tear of the right knee. It paid him wage-loss compensation for disability from work on the supplemental rolls for the period March 19 through May 30, 2015, and on the periodic rolls for the period May 31, 2015 through January 7, 2017.⁴

Appellant returned to limited-duty work (less than eight hours per day) commencing January 8, 2017 and OWCP paid wage-loss compensation for partial disability from work for the period January 9 through 20, 2017. He stopped work in late-January 2017, but did not receive wage-loss compensation for this work stoppage.

Appellant continued in non-work status and on November 6 and 12, 2017 he filed claims for compensation (Form CA-7) in which he claimed wage-loss compensation for disability from October 14 through November 10, 2017 due to his accepted January 13, 2015 employment injury. On December 10, 2017 he filed a Form CA-7 in which he claimed wage-loss compensation for disability from November 11 through 24, 2017 due to his January 13, 2015 injury.

Appellant returned to limited-duty work (less than eight hours per day) in late-November 2017. OWCP then paid him wage-loss compensation for partial disability from work on the supplemental rolls commencing November 28, 2017 and on the periodic rolls commencing June 24, 2018. It paid the wage-loss compensation at the augmented 75 percent rate based on appellant having a dependent daughter who was under age 18 (born on June 10, 2001).

By decision dated May 1, 2019, OWCP denied appellant's claim for employment-related disability for the period October 14 through November 10, 2017. By decision dated June 12, 2019, it denied his claim for employment-related disability for the period November 11 through 24, 2017.

Appellant requested a hearing before a representative of OWCP's Branch of Hearings and Review and, by decision dated December 13, 2019, OWCP's hearing representative affirmed the May 1 and June 12, 2019 decisions.

³ OWCP assigned the claim File No. xxxxx2884. On his Form CA-1 appellant indicated that he had a dependent in the form of a child under 18 years old. Under a separate claim (File No. xxxxx8884), OWCP had previously accepted that, by early-2014, appellant had sustained the occupational diseases of aggravation of degenerative disc disease/disc herniation at C5-6, and aggravation of diffuse cervical spondylosis. It administratively combined File Nos. xxxxx8884 and xxxxx2884, designating the latter file as the master file

⁴ On May 8, 2015 appellant underwent OWCP-authorized right knee surgery, including debridement of the medial meniscus.

OWCP periodically requested that appellant submit financial disclosure statements (EN1032 forms), which solicited information about his employment, volunteer work, dependent status, receipt of other federal benefits and/or payments, and third-party settlements. The forms advised appellant regarding the standards for establishing whether he had a dependent within the meaning of FECA and, therefore, qualified for compensation paid at the augmented 75 percent rate.⁵ They advised appellant of the consequences for failure to fully provide information about claimed dependents, including discontinuation of the right to receive augmented compensation. On February 10, 2020 OWCP provided him with an EN1032 form and informed him that federal regulations required him to report any earnings received or employment performed during the previous 15 months. It advised that appellant was required to fully answer all questions on the EN1032 form and return it within 30 days or his benefits would be suspended pursuant to 20 C.F.R. § 10.528. OWCP mailed the letter to his address of record.

On February 18, 2020 OWCP received an EN1032 form, signed by appellant on February 14, 2020, which was missing pages 1, 3, and 5. In the “Part A -- Employment” section, appellant did not respond to question 3 with a “Yes” or “No” answer regarding whether he was unemployed for all periods during the past 15 months. In the “Part D -- Other Federal Benefits or Payments” section, he did not respond to question 1 (subpart a), with a “Yes” or “No” answer regarding whether he had been assigned a civil service active (CSA) number by the Office of Personnel Management (OPM). In the “Part F -- Fraud Offenses” section, appellant did not respond to question 2 with a “Yes” or “No” answer regarding whether he was incarcerated during the past 15 months for any felony offenses that resulted in a conviction under state or federal law.

By decision dated April 10, 2020, OWCP suspended appellant’s wage-loss compensation benefits, effective April 26, 2020, due to his failure to submit a fully completed EN1032 form as requested. It noted that on February 18, 2020 it received an EN1032 form, signed by appellant on February 14, 2020, which was missing pages 1, 3, and 5, and which contained inadequately answered questions in the sections entitled “Part A -- Employment,” “Part D -- Other Federal Benefits or Payments,” and “Part F -- Fraud Offenses.” OWCP advised that, if appellant fully completed and returned an enclosed copy of the EN1032 form, it would reinstate his wage-loss compensation benefits retroactive to the date of suspension.

On April 20, 2020 OWCP received a Form EN1032, signed on April 20, 2020 in which appellant completed all seven pages and provided responses to the questions in the sections entitled “Part A -- Employment,” “Part D -- Other Federal Benefits or Payments,” and “Part F -- Fraud Offenses,” which had been referenced by OWCP in its April 10, 2020 decision. In the section entitled “Part A -- Employment,” appellant reported the pay he received working for the employing

⁵ The EN1032 forms advised that an unmarried child under 23 years of age could be a dependent after age 18 if he or she qualified as a student because he or she had not completed four years of education beyond the high school level and was regularly pursuing a full-time course of study. The forms also advised that an unmarried child could be a dependent if he or she were living with the claimant or receiving regular contributions for support from the claimant, and if he or she were incapable of self-support because of a physical or mental disability.

establishment. In the section entitled, “Part C -- Dependents,” he indicated that he was not married, but asserted he had a dependent daughter who was born on June 10, 2001.⁶

By decision dated April 28, 2020, OWCP suspended payment of appellant’s wage-loss compensation at the augmented 75 percent rate effective April 28, 2020.⁷ It advised him that it had received the EN1032 he completed on April 20, 2020, but found that the form was incomplete with respect to whether he had a dependent as defined under FECA and qualified for wage-loss compensation paid at the augmented 75 percent rate. OWCP noted that appellant listed a daughter who was over 18 years old, but did not explain how she qualified as a dependent. It advised him that, if he completed and returned an enclosed copy of an EN1032 form, which demonstrated that he was entitled to augmented wage-loss compensation, such compensation would be restored retroactively to the date it was suspended.

LEGAL PRECEDENT -- ISSUE 1

Section 8106(b) of FECA authorizes the Secretary of Labor to require a partially disabled employee to report his or her earnings from employment or self-employment, by affidavit or otherwise, in the manner and at the times the Secretary specifies.⁸

Under section 10.528 of OWCP’s implementing federal regulations, an employee in receipt of compensation benefits must complete an affidavit as to any work or activity indicating an ability to work which the employee has performed for the prior 15 months.⁹ If an employee who is required to file such a report fails to do so within 30 days of the date of the request, his or her right to compensation for wage loss is suspended until OWCP receives the requested report. At that time, OWCP will reinstate compensation retroactive to the date of suspension if the employee remains entitled to compensation.¹⁰

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly suspended appellant’s wage-loss compensation benefits, effective April 26, 2020, for failure to fully complete an EN1032 form as requested.

On February 10, 2020 OWCP provided appellant with the EN1032 form and notified him that federal regulations required him to complete the form and answer all questions concerning his employment or earnings. It properly notified him that, if he did not completely answer all

⁶ In an April 24, 2020 letter, OWCP again advised appellant regarding the standards for receiving wage-loss compensation at the augmented 75 percent rate. It requested that he submit information verifying that he had a dependent that qualified him for augmented compensation.

⁷ Effective April 26, 2020, OWCP paid appellant wage-loss compensation at the non-augmented 66 2/3 percent rate, rather than the augmented 75 percent rate.

⁸ 5 U.S.C. § 8106(b).

⁹ 20 C.F.R. § 10.528. *See also R.B.*, Docket No. 20-0176 (issued June 25, 2020); *A.H.*, Docket No. 15-0241 (issued April 3, 2015).

¹⁰ *Id.* *See also P.M.*, Docket No. 16-0382 (issued May 19, 2016).

questions and return the form within 30 days, his benefits would be suspended. The record reflects that OWCP's letter was sent to appellant's address of record and there is no indication that it was returned as undeliverable.¹¹ Under the mailbox rule, a document mailed in the ordinary course of the sender's business practices to the addressee's last known address is presumed to be received by the addressee.¹²

Appellant failed to timely submit a fully-completed EN1032 form within 30 days of OWCP's request. On February 18, 2020 OWCP received an EN1032 form, which was not fully completed. The EN1032 form, signed by appellant on February 14, 2020, was missing pages 1, 3, and 5. In the "Part A -- Employment" section, appellant did not respond question 3 with a "Yes" or "No" answer regarding whether he was unemployed for all periods during the past 15 months. In the "Part D -- Other Federal Benefits or Payments" section, he did not respond question 1 (subpart a), with a "Yes" or "No" answer regarding whether he had been assigned a CSA number by the OPM.¹³ In the "Part F -- Fraud Offenses" section, appellant did not respond question 2 with a "Yes" or "No" answer regarding whether he was incarcerated during the past 15 months for any felony offenses that resulted in a conviction under state or federal law.

Appellant was receiving wage-loss compensation and was, therefore, required to fully complete and submit the EN1032 form in a timely manner.¹⁴ Appellant's failure to file a fully-completed EN1032 form within 30 days properly resulted in the suspension of his wage-loss compensation. Thus, the Board finds that OWCP properly suspended his wage-loss compensation benefits, effective April 26, 2020, pursuant to 20 C.F.R. § 10.528.¹⁵

LEGAL PRECEDENT -- ISSUE 2

The basic rate of compensation under FECA is 66 2/3 percent of the injured employee's monthly pay. Where the employee has one or more dependents as defined under FECA, he or she is entitled to have basic compensation augmented at the rate of 8 1/3 percent, for a total of 75 percent of monthly pay.¹⁶ Under FECA, a dependent includes, *inter alia*, "an unmarried child, while living with the employee or receiving regular contributions from the employee toward his support," who is either under 18 years of age, or over 18 years of age and "incapable of self-support because of physical or mental disability."¹⁷ FECA further provides that compensation payable for

¹¹ See *J.H.*, Docket No. 20-0785 (issued October 23, 2020); *Kenneth E. Harris*, 54 ECAB 502 (2003).

¹² *Id.*

¹³ Appellant indicated, "I don't believe so. I don't know what it is."

¹⁴ See *R.S.*, Docket No. 20-0580 (issued September 14, 2020); *A.S.*, Docket No. 17-1530 (issued November 7, 2017).

¹⁵ See *R.B.*, *supra* note 9?; *P.M.*, *supra* note 13; *M.W.*, Docket No. 15-0507 (issued June 18, 2015).

¹⁶ 5 U.S.C. § 8110(b).

¹⁷ *Id.* at § 8110(a)(3).

an unmarried child that would otherwise end at the time he or she reaches 18 years of age shall continue if he or she is a student as defined by 5 U.S.C. § 8101.¹⁸

OWCP's regulations provide that "[a]n employee who is receiving augmented compensation shall be periodically required to submit a statement as to any dependents, or to submit supporting documents such as birth or marriage certificates or court orders, to determine if he or she is still entitled to augmented compensation."¹⁹ According to section 10.536, "If an employee fails to submit a requested statement or supporting document within 30 days of the date of the request, OWCP will suspend his or her right to augmented compensation until OWCP receives the requested statement or supporting document. At that time, OWCP will reinstate augmented compensation retroactive to the date of suspension, provided that the employee is entitled to receive augmented compensation."²⁰

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly suspended appellant's right to augmented compensation, effective April 26, 2020, because he had not established that he had a dependent as defined under FECA.

The appellant claimed one dependent in the August 20, 2020 EN1032 form he submitted: an 18-year-old daughter. The EN1032 form does not contain information to establish that appellant's daughter as eligible for dependent status under FECA.²¹ Although the EN1032 form informed appellant of the qualifications for a dependent as defined under FECA, appellant only indicated that he had a daughter who was born on June 10, 2001.

Through the submission of an EN1032 form appellant was required to submit evidence that he had an eligible dependent as defined under FECA. Section 10.535 of OWCP's regulations indicates that a claimant shall be required to submit necessary evidence to support entitlement to augmented compensation.²² OWCP, through the language of the EN1032 form, specifically advised appellant of the information/evidence necessary to establish a continuing right to augmented compensation, and of the consequences for failure to respond, including discontinuation of the right to receive augmented compensation. Within the 30 days afforded by OWCP, appellant failed to submit information/evidence, which would establish that he had a dependent as defined under FECA. Under section 10.536 of the regulations, OWCP properly

¹⁸ *Id.* 5 U.S.C. § 8101(17) defines a student as an individual under 23 years of age who has not completed four years of education beyond the high school level and is regularly pursuing a full-time course of study.

¹⁹ 20 C.F.R. § 10.535(c).

²⁰ *Id.* at § 10.536.

²¹ *Id.*

²² *Id.*

suspended entitlement to augmented compensation, effective April 26, 2020, as the necessary information/evidence was not received.²³

CONCLUSION

The Board finds that OWCP properly suspended appellant's wage-loss compensation benefits, effective April 26, 2020, for failure to fully complete an EN1032 form as requested. The Board further finds that OWCP properly suspended appellant's right to augmented compensation, effective April 26, 2020, because he had not established that he had a dependent as defined under FECA.

ORDER

IT IS HEREBY ORDERED THAT the April 10 and 28, 2020 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 21, 2021
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board

²³ See *Jacqueline S. Harris*, Docket No. 04-1730 (issued January 13, 2005).